



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: TONI J. TABER, CMC
CITY CLERK

SUBJECT: SEE BELOW

DATE: July 21, 2022

SUBJECT: Implementation of AB 361 to Permit Members of the Rules and Open Government Committee to Attend Rules and Open Government Committee Meetings via Teleconference during the Governor's Proclaimed COVID State of Emergency.

RECOMMENDATION

Adopt findings to incorporate the Governor's proclaimed COVID state of emergency to permit members of the Rules and Open Government Committee to attend public meetings by teleconference or otherwise electronically pursuant to Government Code Section 54953(e), because state or local officials have recommended measures to promote social distancing and/or meeting in person would present imminent risks to the health and safety, as further described in the staff memorandum.

[REQUIRES A MAJORITY VOTE TO PASS. Cal. Govt. Code Section 54953(e)(1)].

OUTCOME

This action will allow members of the Rules and Open Government Committee to attend this meeting via teleconference, effective immediately, due to the Governor's proclaimed COVID state of emergency, without listing the teleconference location (physical location of a participating member) on the agenda.

BACKGROUND

On September 17, 2021, Governor Newsom signed AB 361 amending Government Code Section 54953 to allow a local agency to use teleconferencing for public meetings without requiring the teleconference location to be accessible to the public or a quorum of the members of the legislative body of the agency to participate from locations within the boundaries of the agency's jurisdiction during a Governor-proclaimed state of emergency as long as the legislative body finds that 1) meeting in person would present imminent risks to the health or safety of attendees, or 2) state or local officials have imposed or recommended measures to promote social distancing. In such circumstances, a legislative body is not required to make available a physical location from which members of the public may observe the meeting and offer public comment.

Since September 28, 2021, and effective through July 28, 2022, the San Jose City Council adopted AB 361 Resolution Nos. 80237, 80266, 80290, 80323, 80343, 80363, 80400, 80445, 80481, 80507, 80576, and 80609, amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow all City legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361; to modify agenda noticing and document posting; and to incorporate all future Governor's Executive Orders regarding the Brown Act into the City's open government procedures, as deemed appropriate by the City Clerk and City Manager, without further Council action.

Additionally, because the City's Modified COVID Sunshine Resolution No. 79485 for the placement of Council agenda items after Rules Committee was only in effect while social distancing is recommended or imposed, the substance of that resolution stays in effect during the Governor's proclaimed COVID state of emergency.

The City-wide AB 361 Resolution allowing all City legislative bodies to have teleconferenced meetings expired on July 28, 2022, and the San Jose City Council will not meet again until August 9, 2022, to adopt another City-wide AB 361 Resolution. Therefore, this action is needed to be adopted by majority vote to permit members of the Rules and Open Government Committee, which is a legislative body, to attend via teleconference, if needed.

ANALYSIS

AB 361, an urgency measure that was effective October 1, 2021, amended Government Code Section 54953 to allow a legislative body to use teleconferencing for public meetings without requiring the teleconference location (physical location of a participating member) be accessible to the public or a quorum of the members of the legislative body participate from locations within the boundaries of the agency's jurisdiction in the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Failure to approve this action would result in members of the Rules and Open Government Committee being unable to teleconference in, if necessary, on August 3, 2022, without exposing the locations of each member's teleconferenced location on the posted agenda.

An additional provision of AB 361 states that in the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

These new provisions are only operative until January 1, 2024, at which point they are repealed, and the standard Brown Act teleconferencing requirements become effective again.

Beginning on March 10, 2020 and continuing every 60 days thereafter, most recently Resolution No. 80180 adopted on August 17, 2021, and Resolution No. 80262 adopted on October 19, 2021, the City Council has continued its proclamation of local emergency based on substantial evidence that the public interest and necessity require the continuance of the proclamation of local emergency related to COVID-19.

Since September 21, 2021, "in light of the continued state of emergency related to COVID-19, the [Santa Clara] County Public Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws."¹

Effective May 6, 2022, due to an increase in positive COVID-19 cases in the City employee workforce and local community, the City reinstated the mandatory mask mandate for all City employees. Since June 28, 2022, California's COVID-19 positivity rate has continued to climb, surpassing anything the state has seen this year, as new, more transmissible variants grow throughout the state. The fast-spreading omicron subvariants BA.4 and BA.5 can partially evade immunity and are 10% more transmissible than the earlier BA.2 subtype. As of July 6, 2022, the entire nine-county Bay Area is at the high community risk level for COVID-19 at which federal regulators recommend everyone wear face masks indoors as newer and more immunity-evasive versions of the omicron variant spread. Bay Area health officials said infections remain at February 2022 elevated levels with no signs of declining, with COVID hospitalizations including significant numbers admitted for other health issues whose COVID infections were found through routine screening tests. As of July 17, 2022, COVID hospitalizations have more than quadrupled in the past three months, up to 4,432 patients from a low of 949 on April 16.

These associated emergency conditions are on-going and there is a need to continue teleconferencing for public meetings without posting the teleconferencing locations on the agenda and without requiring the teleconference locations to be accessible to the public during the current Governor-proclaimed COVID-19 state of emergency. The state of emergency continues to directly impact the ability of some or all members of the Rules and Open

¹ "Recommendation Regarding Continued Remote Public Meetings of Governmental Entities," (County of Santa Clara Public Health Department, Issued by Health Officer Sept. 21, 2021, *available at* <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/documents/health-officer-recommendation-re-public-governmental-meetings-09-21-21.pdf>).

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Government Committee to meet safely in person, and City officials continue to impose or recommend measures to promote social distancing in City facilities.

EVALUATION AND FOLLOW-UP

Approval of this action allows members of the Rules and Open Government Committee to meet virtually through the COVID-19 state of emergency as declared by the Governor, provided the public has the ability to participate virtually. City staff will go to Council on August 9, 2022 to recommend adopting an AB 361 resolution that will allow Joint Power Authority legislative bodies for which the City serves as lead staffing agency, City Decision-Making Bodies, City Boards, Committees and Commissions, and City Other Advisory Entities remaining fully virtual, with City Council and Council Committee meetings continuing with the hybrid meetings. Recognizing the health risks posed to our immunocompromised officials should the state emergency declaration expire before the spread of COVID-19 is significantly controlled, staff will continue legislative advocacy efforts to extend the remote meeting exemption for immunocompromised individuals beyond the expiration of a statewide emergency declaration.

PUBLIC OUTREACH

This memo will be posted with the agenda for August 3, 2022.

CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment

A handwritten signature in brown ink, appearing to read "Toni J. Taber", with a stylized flourish at the end.

TONI J. TABER, CMC
City Clerk

If you have any questions, please contact the Office of the City Clerk at 408-535-1260.